

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4774 of 1984

Date of decision: 31-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ABDULGAFFAR A CHHATBAR

Versus

STATE OF GUJARAT  
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Appearance:

Mr. Manoj Popat for MRS MC THAKKER for Petitioner  
Mr. N. N. Pandya for Respondent No. 1, 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/96

ORAL JUDGEMENT

Prayer has been made by the petitioner for

quashing the order annexure-E dated 12th October, 1983 passed by the second respondent. The facts of the case, briefly stated, are as under:

The petitioner was appointed as junior clerk by the Irwin Group of Hospitals at Jamnagar under order dated 7-9-1962. It is not in dispute that it was a temporary appointment without any selection or without following any procedure of selection to be made for appointment to the post. He worked as junior clerk from 7-9-1962 to 5-3-1963. Thereafter he was appointed as dresser. The petitioner was again appointed as O.P.D. Clerk with effect from 5-6-1963. However the appointments which were given to the petitioner on the post of dresser and O.P.D. clerk were also temporary appointments without following the procedure of selection. The petitioner was promoted to the post of Senior Clerk on 2-4-1969. Under order dated 14-5-1976 the petitioner was reverted to the post of junior clerk on the ground that he had not been recruited to the post of junior clerk in accordance with the mode of appointment through centralised recruitment scheme. This reversion led to the filing of special civil application No.850 of 1976 before this Court. The aforesaid special civil application has been decided by this court on 7th December, 1979 directing the respondents to examine the case of the petitioner taking into consideration two facts namely:

(i) whether the scheme had come to be operated on the day on which the petitioner was appointed; and  
(ii) even the scheme had come into force, whether it would be appropriate to decide in the year 1976 to revert the petitioner on the ground that his initial appointment in the year 1963 was irregular.

The respondents have not complied with the direction which was given by this Court on 7th December, 1979 in the aforesaid special civil application. Therefore the petitioner filed contempt petition being Misc. Civil Application No.620 of 1983. The contempt petition was disposed of on 2nd September, 1983. The order passed in the contempt petition has been reproduced in para 4 of the present petition. In pursuance of the order made by this Court in contempt petition the petitioner made representation in writing and he was also called by the Additional Chief Secretary (Health and Family Welfare) for personal hearing on 12th September 1983. By order dated 12th October, 1983 he was informed that there was no reason to change the earlier order passed by the Government on 15th April, 1982, and the Government had decided to revert the petitioner to the lower post with immediate effect. Thereafter the petitioner was reverted to the scale of Rs.260-400. The

petitioner sought voluntary retirement from service with effect from 19th November, 1983 which has been granted.

2. No reply to this writ petition has been filed by the respondents. Mr. Manoj Popat, learned counsel for the petitioner, made threefold submissions before this court. Firstly he contended that the respondents have not filed any reply to the petition and as such the averments made in the petition stand admitted. This writ petition has to be accepted only on this ground. It has next been contended that the centralised recruitment scheme has come into force much after the appointment of the petitioner to the post of junior clerk and as such his reversion on the ground that he was not a regularly appointed candidate to the post of junior clerk is arbitrary. The learned counsel for the petitioner lastly contended that reversion of the petitioner made after more than seven years is arbitrary.

3. In the earlier petition this court has given direction to the respondents to consider the case of the petitioner after taking into consideration two facts as reproduced above. Mr. Popat contended that these two facts have not been taken into consideration by the respondents while making order dated 12th October, 1983. When the order dated 12th October, 1983 was passed the petitioner, as contended by the counsel, had already worked on the post of Senior Clerk for more than 14 years. That fact has also not been taken into consideration. Learned counsel for the petitioner urged that the petitioner has already taken voluntary retirement with effect from 19th November, 1983 and his reversion will put him to suffer great monetary loss. He further contended that when under the impugned order the petitioner's service on the post of junior clerk was regularised there was no justification for the respondents to say that the order of his reversion cannot be recalled. The moment the petitioner's appointment on the lower post was regularised the petitioner was entitled to continue on the post of senior clerk.

4. Mr. Pandya, learned counsel for the respondents, on the other hand contended that the initial entry of the petitioner was bad in law and as such promotion which was given to him was equally bad. It is true that the petitioner was allowed to work on the higher post for many years, but merely because of the time lapse it will not give any right for regularisation of promotion of the petitioner which was illegal. Direction was given earlier by this Court to consider the case of the petitioner. Consequently the petitioner's case was

considered. Therefore the petitioner could not have made any further grievance. Lastly Mr. Pandya contended that merely because the petitioner's service has been regularised on the lower post, his promotion to the higher post will not be automatically regularised. The petitioner could have got his promotion in due course as per seniority to be given to him from the date of regularisation of his service on the post of junior clerk. He cannot be allowed to take march over his seniors in the matter of promotion to the next higher post.

5. I have given my thoughtful consideration to the contentions advanced and facts of the case. Though I do not find any substance in the contentions raised by the learned counsel for the petitioner, I find sufficient merit in one contention that the case of the petitioner has not been considered in accordance with the directions given by this court on 7th December, 1979 in special civil application No.850 of 1976. Two other factors were added to his case by passage of time, that is, the petitioner has worked on the post of senior clerk for number of years and the petitioner has sought voluntary retirement which has been accepted. These facts were to be taken into consideration by the respondents while determining whether the petitioner should be reverted to the post of junior clerk and whether he should be deprived of the retirement benefits of the post of senior clerk when he sought voluntary retirement. Reply to the writ petition has not been filed by the respondents and the facts stated in the petition stand uncontroverted. But only on this ground the writ petition cannot be accepted because this court will not grant a writ of certiorari against the order of the respondents on the ground of non-filing of reply by the respondents, unless the petitioner makes out a case of travesty of justice or error apparent on the face of the impugned order.

6. The fact, however, remains that the case of the petitioner has not been considered in the light of the observations made by this Court earlier. The interest of justice will therefore be served if the special civil application is disposed of with the direction to the respondents to consider the case of the petitioner afresh taking into consideration the earlier direction given by this court on 7th December 1979 in special civil application No.850 of 1976 and the two additional factors that the petitioner continued to work on the post of senior clerk for all these years and that the petitioner has sought voluntary retirement. Necessary exercise in this respect shall be taken by the respondents within a

period of four months from the date of receipt of certified copy of this judgment. The petitioner shall be at liberty to file detailed representation in this regard to the respondents within a period of one month from today. The petitioner may produce along with the representation all necessary documents for consideration of the respondents. In case the matter is decided in favour of the petitioner, he shall be entitled to all consequential benefits and his pension and other retirement benefits will be revised accordingly. In case the petitioner's grievance is not acceptable, then the concerned respondent shall pass a reasoned order and copy thereof shall be sent to the petitioner by registered post. Rule made absolute in the aforesaid terms. No order as to costs.

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